Tribal Fee to Trust Steeped in Fraud
Results in
Make Believe Reservations

If you were guaranteed a life of poverty through honesty or a life with success through fraud, what path would you choose? Many people employed by the Bureau of Indian Affairs have left fearing for their life because of the secrets held within. One of the biggest secrets and lies within is contained in the fee to trust process. This is where lands held in an individual's name are said to be converted to lands held in title by the United States for use by the individual. The new trust status will largely leave the property outside the regulation of the state and more important exempt from state and federal taxes. The lands are said to be sovereign and consequently under tribal governance. Tribal police, tribal courts, tribal land use, tribal control and tribal regulation of resources operate due to this recognized "sovereignty" associated with trust land status. It is this recognized sovereignty that permits tribes to operate casinos. Unknown to the general public is that neither the State Gaming Commissions, the National Indian Gaming Commission nor Interior verifies land status for the placement of casinos. If verification isn't occurring here at this most important level, the question must be asked whether it is occurring at all.

Today, as tribes convert lands to trust, they are said to be establishing, re-creating or enlarging their reservation. But where in the Constitution does it permit the Federal government to own land for the purpose of citizen reservations based on race? The U.S. Constitution supercedes all common law. Consequently, one would think that tribal governments, as addressed in common law, would be illegal. What about the 1924 Citizenship Act, does this not now mandate that political relationships that may have at one time treated lands as sovereign be viewed differently? Article IV, Section 4 of the U.S. Constitution states every state is guaranteed a republican form of government so as to protect its citizens. Tribal governments are not republican forms of government. In deed, it appears they are nothing more than pretend governments. I maintain and will explain how tribes, with the help of the Bureau of Indian Affaires, are creating make believe reservations. Why is this important to you and me as American citizens? Because make believe reservations are dismantling America, piece by piece. They putting the tax burden on fewer numbers of people and economically creating uneven playing fields.

Federal Laws for Land Acquisition

You can find the federal rules for moving land from fee simple status to trust at 25 CFR Chapter 1 Part 151. These rules were established in 1934 as part of what is referred to as the Indian Reorganization Act. The rules apply to all tribes, <u>provided that nothing superseded any previous Act of Congress.</u> With the exception of the Metlakatla Indian Community of Annette Island Reserve, the Bureau has taken the position that the Alaska Native Claims Settlement Act precludes the Secretary from taking land into trust for Natives in Alaska. I maintain there are other Acts of Congress that preclude the majority

of Indian tribes reacquiring land in trust. Under the treaty written, we must ask whether the tribe ceded all their lands in the U.S. territory. Did the treaty permit allotment language? If these two factors exist, then certainly no tribe can maintain they were forced to give up governance authority. The present legal test of whether a Congressional Act, like a treaty, prevents a tribe from acquiring lands into trust occurs when the trust applicant's information is reviewed for compliance with the Federal Justice Title standards. When the applicant complies with those standards, the trust deed is issued a volume and page where it is then filed or recorded in the federal trust deed book.

Assessors are Being Duped

With the exception of properties to be used for gaming, the authority to approve all acquisitions has been delegated to the Bureau's Area Directors. The Secretary of Interior provides acceptance for lands to be used in gaming. The important thing to understand is that these parties are providing only an "initial" approval. The "formal" final approval can only occur when the applicant satisfies the Federal Justice Title standards. Currently, Interior will acknowledge that neither they nor the National Indian Gaming Commission confirm trust status of lands being sited for casinos. (See reference 1)

Communication with Washington State's gaming commission will verify they work in good faith with the tribes and consequently are not required to verify land status. Communication with state tax revenue departments across this nation will verify they have provided little or no direction or guidance to assessors on what constitutes an appropriate trust conveyance. With such poor government over site, it is a fact that the majority of federal gambling casinos are going in on fee lands. Assessors are recording deeds that purport to be trust after the applicant has received the "initial" stamped acceptance. These deeds do not have the volume or page where they are recorded in the federal registry. Neither do these deeds contain a restrictive phrase that prevents the property's alienation unless approved by the Secretary of Interior. Interestingly, the Bureau of Indian Affairs in Portland, Oregon is making their trust deed books off limits to review by assessors.

General Acquisition Application Process

The first step in the acquisition process requires the trust applicant identify the existence of the statutory authority for the acquisition, the need for the land, the purpose for which the lands will be used, the degree of assistance needed if applicant is an individual, the impact on the state and its political subdivision and potential jurisdictional problems.

The second step requires the State and political subdivisions be notified. Interior provides 30 days for submission of comments. If no 30 day comment period has been initiated by Interior, the Interior Indian Appeals Board will vacate any purported fee to trust that ends up being recorded by the County. But it appears this vacation can only be done by the body with jurisdiction over the property. That leaves the common citizen without an immediate and cost effective resource to correct the record. Steps 3 and 4 are

spent by the BIA reviewing and responding to comments. Step 5 is notification to the applicant and interested party of BIA's decision. The decision is accompanied by notification that "official" acceptance will not occur until the applicant has satisfied all requirements of the Federal Justice Title Standards. There is also mention made in the Bureau notification that a 30 day appeal on the acceptance is available through the Interior Indian Appeals Board. Once all appeals are satisfied and compliance has been satisfied with the title standards, BIA is suppose to execute an appropriate instrument accepting title. This is where the hoodwinking occurs. Local assessors know no more about what constitutes an appropriate trust instrument than their prosecuting attorneys and state tax revenue departments and local legislators are providing no guiding legislation. This leaves the review and acceptance of these deeds to the discretion of each assessor and their local prosecutor.

The fact is, purported trust deeds are being recorded as trust when they have not complied with the Federal Justice Title Standards. Valid trust deeds must have a restrictive phrase that prevents the property from being alienated without the approval of the Secretary of Interior. But tribes want to be able to leverage their property, so this phrase will not be found. The deeds must have with Alta Title Insurance. Certainly assessors are not checking the kind of insurance the trust applicant has acquired. Alta title insurance means there will be no exceptions in the deeds, no exceptions even for treaty or for purposes of aboriginal lands. But most important, the deed must designate the volume and page where the deed is recorded in the federal registry. Acknowledgement of a filing along with a letter that addresses the type of jurisdiction being accepted by the federal government, have been addressed as far back as 1943 in the U.S. Supreme Court case of *Adams v. U.S.* But more important than Adams is the U.S. Supreme Court case of United States v. Fox (1876). Here the Court affirms that the State legislature must approve transfer of land title and jurisdiction to the United States. The fact this approval is needed by the State legislature is not even addressed in the Title 25 U.S.C fee to trust rules. This creates one of the biggest hoop holes of all in the fee to trust and put all Indian casinos at risk of creating race base based monopolies using public lands.

While things are drastically amiss for our native citizens in the fee to trust, it is more amiss when it comes to protection of their civil rights. Under the Constitution, it appears that much can be done to salvage the personal constitutional rights of Indians if local jurisdictions only looked at what I have labeled as phony trust deeds being used to create make believe reservations. Getting things right at the local level must be our priority. We can only begin to get things right when the local jurisdictions demand proof of exemption. After all isn't every other American citizen required to bare the burden of proof for certain property tax assistance? Knowing that good faith efforts has led to duping and fraud in fee to trust, it's time we take a more responsible review of what is really happening with our fee to trust transactions. It time to say enough is enough and set our records straight.

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References 1. Read first news article NIGC develops system to track Indian lands from internet by typing “Indianz news July 28, 2005” on your computer

2. *Adams v. U.S. 319, U.S. 312 (1943)* addresses requirements for a valid trust acquisition
3. Federal Justice Title Standards – can be located on the internet
4. United States v. Fox, 94 U.S. 315 (1876)